

**A                    Genesis World Sdn Bhd v Mobikom Sdn Bhd**

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D1-22-1764 OF 2001  
VINCENT NG J

19 MAY 2003

**B                    *Civil Procedure* — Res judicata — Issue estoppel — Action struck out for want of prosecution — Action filed afresh within limitation period — Whether plaintiff barred from proceeding against defendant on same issue — Whether action filed afresh an abuse of the process of the court — Whether argument that plaintiff within limitation time relevant**

**C                    *Civil Procedure* — Striking out — Want of prosecution — Striking out within limitation period — Whether plaintiff precluded from filing action afresh — Whether plaintiff ought to have appealed against decision to strike out — Whether failure to appeal against decision to strike out a bar to filing action afresh — Whether action filed afresh an abuse of the process of the court**

**D                    *Civil Procedure* — Time — Limitation of action — Striking out for want of prosecution — Whether plaintiff entitled to file action afresh — Whether such fresh action an abuse of the process of the court — Whether fact that limitation not expired a relevant factor in determining whether plaintiff had a valid cause of action**

**E                    Under an agreement entered into by the parties, the plaintiff alleged it was to be paid a registration subsidy of RM500 for each handphone issued to its members. The plaintiff had thus caused to be issued a writ of summons against the defendant for RM1m ('the first suit'). The defendant entered its appearance and filed its statement of defence to the first suit. The plaintiff then, for reasons best know to itself, did nothing for exactly one year five months and 16 days before taking out a summons for directions ('SFD') under O 25 of the Rules of the High Court 1980 ('the RHC') in the first suit. The defendant took steps to set aside the SFD and to have the first suit dismissed for want of prosecution. When the plaintiff's SFD and the defendant's application both came for hearing, the plaintiff withdrew the SFD and requested an adjournment to file an application for abridgement of time to file their SFD. Despite the adjournment being granted, the plaintiff did not file the proposed application. Thus, when the defendant's application came up for hearing, not only was there no application for abridgement of time to file the SFD, there was no affidavit in reply from the plaintiff before the court. The defendant's application was allowed effectively bringing the first suit to an end. The plaintiff did not appeal against that order but instead filed another civil suit based on the same cause of action (the present suit). The defendant applied to set aside the writ of summons and statement of claim in the present suit, arguing that the plaintiff was estopped from filing the present suit as this was a deliberate attempt to circumvent the appeal process and amounted to a blatant abuse of court process. The plaintiff, on the other hand, argued that as the first suit was struck out for want of prosecution, there was no decision on**

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the merits of the matter. Having commenced the present suit within the limitation period, the plaintiff was entitled to proceed with the present suit. The senior assistant registrar ('SAR') dismissed the defendant's application and the defendant appealed.

**Held**, allowing the appeal and striking out the present suit as an abuse of the process:

- (1) The plaintiff's failure to appeal against the striking out of their first suit constituted a concession that the decision of the learned SAR was correct. By not appealing, the plaintiff was now, in fact, precluded from canvassing the argument that they were still within the six-year limitation period. The plaintiff should not be allowed to re-agitate an issue which may only have been available to it had they appealed against the dismissal of the first suit. Should this court hold the converse view, it would encourage litigants to ignore the RHC and act with impunity so long as the limitation period has yet to run its full course (see p 271E-G); *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Anor v Lee Boon Tin* [1998] 4 MLJ 373 and *Lim Oh & Ors v Allen & Gledhill* [2001] 3 MLJ 481 followed.
- (2) While the courts are averse to dismissing a suit for want of prosecution where the limitation period has not expired, a plaintiff who has opted not to appeal but instead file a fresh action, must give some cogent reason why the second action should be allowed to proceed. The plaintiff's disregard to the exigency of time has caused prejudice to the due administration of justice and they have failed to identify any cogent reason to justify being allowed to proceed with the present suit (see pp 271G-H, 272A); *Transcom Rand (M) Sdn Bhd v Mara Holdings Sdn Bhd* [2002] 3 MLJ 31 followed.
- (3) The plea of limitation has always been recognized as a wholly separate defence, available to a defendant, to be used as a shield. It was never designed as a sword in the hands of a plaintiff. For the latter to assert that a second action should be allowed to proceed solely because it was filed within the limitation period is tantamount to invoking a defendant's shield as a plaintiff's sword (see p 272A-B).

**Obiter:**

As one of the measures to help clear the backlog of cases, the Rules Committee ought to re-amend O 1A and O 2 r 3 of the RHC to incorporate express recognition of the consideration of the concept of prejudice to the due administration of justice in civil cases (see p 270G-H).

**A [Bahasa Malaysia summary]**

**B** Di bawah suatu perjanjian yang ditandatangani pihak-pihak, plaintif mendakwa ia patut dibayar subsidi pendaftaran sebanyak RM500 bagi setiap talifon bimbit yang dikeluarkan kepada ahlinya. Plaintif telah mengeluarkan suatu writ saman terhadap defendan bagi jumlah RM1j ('tindakan pertama itu').

**C** Defendan telah memasuki kehadiannya dan memfailkan pembelaannya kepada tindakan pertama itu. Plaintif kemudian, di atas sebab-sebab yang hanya diketahuinya, tidak mengambil sebarang tindakan bagi tempoh masa satu tahun lima bulan dan 16 hari sebelum mengeluarkan suatu saman bagi arahan (SFD) di bawah A 25 Kaedah-Kaedah Mahkamah Tinggi 1980 dalam tindakan pertama itu. Defendan telah memohon untuk mengenyepikan SFD tersebut dan membatalkan tindakan pertama itu kerana ketiadaan pendakwaan. Apabila kedua-dua SFD plaintif dan permohonan defendan dihadapkan bagi pendengaran, plaintif menarik balik SFD tersebut dan memohon penangguhan supaya suatu permohonan bagi melanjutkan masa pemfailan SFD plaintif dapat difailkan. Walaupun penangguhan telah diberikan, plaintif tidak memfailkan permohonan yang dicadangkan tersebut. Semasa permohonan defendan dihadapkan bagi pendengaran, bukan sahaja tiada permohonan dari plaintif bagi perlanjutan masa supaya memfailkan SFD, malah affidavit jawapan dari plaintif pun tidak difailkan. Permohonan defendan dibenarkan mengakhiri tindakan pertama itu. Plaintif tidak merayu ke atas perintah itu tetapi telah memfailkan suatu tindakan sivil yang baru berasaskan kausa tindakan yang sama ('tindakan ini'). Defendan telah memohon mengenyepikan writ saman dan pernyataan tuntutan dalam tindakan ini, menghujah bahawa plaintif diestopkan dari memfailkan tindakan ini.

**F** Memandangkan ia suatu usaha menggagalkan proses rayuan, suatu usaha penyalahgunaan proses mahkamah yang tidak berselindung. Plaintif, sebaliknya, berhujah bahawa memandangkan yang tindakan pertama telah dibatalkan kerana ketiadaan pendakwaan, maka tiada sebarang keputusan di atas merit perkata ini. Memandangkan yang plaintif telah memulakan tindakan ini dalam tempoh had masa, plaintif berhak meneruskan dengan tindakan ini. Penolong kanan pendaftar ('PPK') telah menolak permohonan defendan dan defendan telah merayu.

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**H** **Diputuskan**, membenarkan rayuan ini dan membatalkan tindakan tersebut sebagai suatu penyalahgunaan proses:

**I** (1) Kegagalan plaintif merayu pembatalan tindakan pertama mereka menjadi suatu pengakuan bahawa keputusan PKP yang bijaksana itu adalah betul. Dengan tidak merayu, plaintif sekarang, sememangnya, dihindarkan dari memajukan hujah bahawa mereka masa di dalam masa penghadan enam tahun. Plaintif tidak harus dibenarkan menghujahkan semula suatu isu yang sedia ada kepada mereka hanya sekiranya mereka merayu keputusan penolakan

tindakan pertama. Sekiranya mahkamah ini memegan pada pendirian sebaliknya, ia akan menggalakkan pihak litigan tidak mempedulikan Kaedah-Kaedah Mahkamah Tinggi dan bertindak tanpa pembalasan selagi masa penghadan masih belum tamat (lihat ms 271E–G); *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Anor v Lee Boon Tin* [1998] 4 MLJ 373 dan *Lim Oh & Ors v Allen & Gledhill* [2001] 3 MLJ 481 diikuti.

- (2) Walaupun mahkamah enggan menolak suatu tindakan bagi ketiadaan pendakwaan selagi masa penghadan belum tamat, seseorang plaintif yang telah memilih supaya tidak merayu tetapi memfailkan suatu tindakan baru, harus memberi alasan yang kukuh mengapa tindakan kedua harus dibenarkan berterusan. Pengabaian plaintif akan kesuntukan masa telah menyebabkan prejudis kepada pentadbiran keadilan dan is agal mengenal pasti sebarang alasan mengapa tindakannya ini harus dibenarkan berterusan (lihat ms 271G–H, 272A); *Transcom Rand (M) Sdn Bhd v Mara Holdings Sdn Bhd* [2002] 3 MLJ 31 diikuti.

- (3) Alasan penghadan sememangnya dikenalpasti sebagai suatu pembelaan berasingan, bagi seseorang defendan, digunakan sebagai perisai. Ia tidak pernah dianggap sebagai pedang bagi kegunaan seseorang plaintif. Bagi plaintif menghujah bahawa tindakan kedua seharusnya dibenarkan berterusan semata-mata atas alasan bahawa ia difailkan dalam masa penghadan setara dengan menggunakan perisai seseorang defendan sebagai pedang seseorang plaintif. (lihat ms 272A–B).

### Obiter:

Sebagai salah satu langkah melegakan lantukan kes, Jawatankuasa Kaedah harus meminda semula A 1A and A 2 k 3 KMT supaya memasukkan suatu pengiktirafan nyata pertimbangan konsep prejudis kepada pentadbiran keadilan dalam kes-kes sivil (lihat ms 270G–H).

### Notes

For cases on issuance of estoppels, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 5140–5151.

For cases on limitation of actions, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 6375–6377.

For cases on striking out for want of prosecution, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 5643–5644.

### Cases referred to

*Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd & Ors*, *Chishtry Coveney & Co v Raja Times Law Report* 29 December 1997 (refd)

- A** *Bailey v Bailey & Anor* [1983] 3 All ER 495 (refd)  
*Birkett v James* [1978] AC 297 (refd)  
*Choraria v Sethia* Times Law Report 29 January 1998 (refd)  
*Gilbert Engineering Co, Inc v Zainuddin bin Ahmad & Ors* [2003] 6 MLJ 103 (refd)
- B** *Janov v Morris* [1981] 3 All ER 780 (refd)  
*Lim Oh & Ors v Allen & Gledhill* [2001] 3 MLJ 481 (folld)  
*Public Bank Bhd v Heng Weng Chin & Ors* [2002] 6 MLJ 49 (refd)  
*Othman bin Puteh & Mohd Hashim bin Saaludin t/a Falah Enterprise v Ku Azman bin Ku Bahari* [2002] MLJU 206; [2002] 7 CLJ 64 (refd)
- C** *Transcom Rand (M) Sdn Bhd v Mara Holdings Sdn Bhd* [2002] 3 MLJ 31 (folld)  
*Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Anor v Lee Boon Tin* [1998] 4 MLJ 373 (folld)

**D** **Legislation referred to**

Rules of the High Court 1980 O 1A, O 2 r 3, O 25

*Joginder Singh (Peter Raj and Ramesh NP Chandran with him) (PI Raj & Co) for the appellant/defendant.*

*CM Phang (CM Phang & Co) for the respondent/plaintiff.*

**E** **Vincent Ng J:**

*Preamble*

- F** Before me is the defendant's appeal (encl 17) against the decision of the learned senior assistant registrar ('SAR') on 6 September 2002, dismissing the defendant's application to set aside the writ of summons and statement of claim dated 8 October 2001.

*Background facts*

- G** It is undisputed that the plaintiff's claim against the defendant was founded upon an agreement dated 28 February 1997; whereby the plaintiff was to be paid a registration subsidy of RM500 for each handphone issued to their members. The plaintiff sought to recover RM1m.

- H** The plaintiff had on 23 April 1999 caused to be issued a writ of summons based on the same cause of action vide Civil Suit No D4-22-1156-99 ('the first suit').

- I** The defendant entered their appearance and filed their statement of defence to the first suit. The plaintiff then, for reasons best known to themselves, went into hibernation for exactly a year five months and 16 days before taking out the summons for directions ('SFD') under O 25 of the Rules of the High Court 1980 ('the RHC') in the first suit.

The diligent defendant took immediate steps to set aside the SFD and to have the whole of the first suit dismissed for want of prosecution.

When their SFD and the defendant's application both came for hearing, the plaintiff opted to withdraw the SFD and requested for an adjournment to file an application for abridgement of time to file their SFD.

Despite being given this respite, the recalcitrant plaintiff chose to disregard the court's peremptory order. As a result, when the defendant's application came up for hearing, not only was there no application for abridgement of time to file the SFD but there was no affidavit in reply by the plaintiff before the court.

This, however, did not stop the plaintiff from contesting the defendant's application. In the circumstances, considering the contumacious conduct of the plaintiff, the learned SAR allowed the defendant's application on 13 July 2001, effectively bringing the first suit to an abrupt but timely end (exh 'KKL-5' encl 8).

This decision is of course in line with the judgment of our Court of Appeal in *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Anor v Lee Boon Tin* [1998] 4 MLJ 373, wherein Mokhtar Sidin JCA held at pp 384–385:

From our observation, it is clear to us that from the two cases there emerged an additional limb to strike out a plaintiff's claim. The original two limbs had been laid down in *Birkett v James* [1978] AC 297. We are not sure whether it is an offshoot of the second limb or it is a third limb. Be that as it may, this limb is important in view of the recent development in respect of case flow management. This new development is to overcome the backlog of cases now existing in courts in England. This new limb as we understood it to be from the two cases in that where there is inordinate and inexcusable delay which involves complete, total or wholesale disregard of the rules of the court with full awareness of the consequences is capable of amounting to such abuse so that if it is fair to do so, the action will be struck out or dismissed on that ground. *From the decisions too, it appears to us that there is no necessity to show prejudice in such cases.* As can be seen, the law in respect of case flow management in England will only be in operation in 1999 yet the courts there had already put in many aspects of its operation to use.

There is no denial that in this country we have backlog of cases due to unnecessary delay. In fact, in some courts, the learned judge had taken the initiative to introduce case flow management in order to hasten the hearing of actions brought before his court. The importance of case flow management is for the parties to observe the time limits as provided by the law so that the action could be brought to trial within time. It is true that some parties had caused unnecessary delay due to non-observance of the time schedule provided by the Rules. We have amended certain provisions in the Rules of the High Court 1980 whereby time limits are given such as filing of affidavits. Our courts are definitely moving towards this case flow management era. *As such, we see no reason why we should not adopt the principles stated in these two decisions.* (Emphasis added.)

After having mulled over the problem of heavy backlog civil cases that have hitherto plagued our courts, I have advocated the adoption, by our courts, of the concept of prejudice to the due administration of justice. In *Public Bank Bhd v Heng Weng Chin & Ors* [2002] 6 MLJ 49, I had occasion to make the following observation (at p 54–56):

A In my view the new principles clearly established in satellite proceedings in England are applicable to cases such as the case at hand which also concern the non-observance of Court rules, a fortiori, when such rules are specially introduced in specific amendments for the designed purpose of countering stale or ‘warehouse proceedings’ or tardy or slothful parties. The other aspect of this issue which cannot escape a thinking mind is that, should the sole consideration for exercise of the Court’s discretion be whether the breach of Court rules has occasioned prejudice to the opposing litigant — in complete disregard to prejudice to the due administration of justice — then we might as well do away with Court rules, since, with such approach Court rules become dead letter as soon as they are legislated into being. Yet, nevertheless, one cannot but be enamoured with — nay, treasure — the saving grace of the Court’s discretionary powers bearing in mind the uncertainties of life consequential upon the way mortals arrange, or have their affairs arranged for them or have it unfortunately thrust upon them, there may occur real situations faced by a litigant or his counsel which makes it impossible or highly difficult to comply with a particular Court rule; hence, a robotic approach to Court rules should be frowned upon by the Courts. Now, with the palpable reversion to the era of true and tangible fairness in the administration of justice I am sure that henceforth our Courts at all levels would have to wrestle with the perennial problem of maintaining a feasible and practical balance between the need to enforce credible sanctions for blatant and flagrant contravention of Court Rules (as would be prevalent if such conduct is readily passed over by the Courts) and conscious regard to the abiding truism that the substantive merits of a case is where real justice resides.

E In my view the solution to this intractable problem could perhaps be found in the new approach taken by the English courts in the two Court of Appeal decisions in *Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd and Others*, *Chishty Coveney and Co v Raja* (TLR December 29, 1997 at 698) and *Choraria v Sethia* (TLR January 29 1998 at 43) which advocated the adoption of the novel concept of prejudice to the due administration of justice as a fresh ground for dismissal or striking out of an action or defence, should there be no prejudice to the opposing litigant, if the extent or nature of the breach of Court rules is contumelious or serious. [Refer to my judgment in *Guaman No D1-22-556-96, Transcom Rand (M) Sdn Bhd v Mara Holdings Sdn Bhd* [2002] 3 MLJ 31 for further discussions on this topic.]

G This new concept clearly stem from the obvious truism that since the Court’s time is limited and finite, parties who hog or monopolist judicial time through contumelious or contumacious or vexatious or slothful or tardy conduct deprive other litigants from their fair share of the Court’s time. Further, with the escalating backlog of cases there must be a determined effort on the part of Judges to see the end of litigation as a tactical weapon — truly, a common phenomenon in the commercial Courts. It was clearly with the sole intention of ensuring the due and expeditious administration of justice that Ord 32 r 13(2) of the Rules was introduced by the Rules Committee — surely, it cannot be an exercise in vain. Thus, in order to override considerations of prejudice to the due and expeditious administration of justice, the Court in the exercise of its discretion to extend time has essentially to consider whether the cogency and gravity of the applicant’s reasons for the delay is co-extensive with the length of the delay for which the extension is sought, even if such delay has caused no prejudice to the other party. It is now settled that the rules of Court must prima facie be obeyed, with adverse consequences if not obeyed. This principle was clearly and

authoritatively laid down in a clear language by the *Privy Council in Ratnam v Cumarasamy & Anor* [1964] 3 All ER 933 by Lord Guest in the following terms (at p 935):

‘The rules of court must, *prima facie*, be obeyed, and, in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation. The only material before the Court of Appeal was the affidavit of the appellant. The grounds there stated were that he did not instruct his solicitor until a day before the record of appeal was due to be lodged, and that his reason for this delay was that he hoped for a compromise. Their lordships are satisfied that the Court of Appeal were entitled to take the view that this did not constitute material on which they could exercise their discretion in favour of the appellant.’

The above principles in *Ratnam* were consistently followed in our courts — in *Ong Guan Teck & Ors v Hijias* [1982] 1 MLJ 105, *Punca Klasik Sdn Bhd v Seok Kim Leow* [1996] 5 MLJ 241, *Gan Hay Chong v Siow Kian Yuh & Anor* [1975] 1 MLJ 41 and *Cheah Teong Tat v Ho Gee Seng & Ors* [1974] 1 MLJ 31.

The opinion expressed above was a sequel to the approach that was advocated by me for adoption by the courts, in *Transcom Rand (M) Sdn Bhd v Mara Holdings Sdn Bhd* [2002] 3 MLJ 31. Also, in *Gilbert Engineering Co, Inc v Zainuddin bin Ahmad & Ors* [2003] 6 MLJ 103, I reiterated similar views I expressed in *Othman bin Puteh & Mohd Hashim bin Saaludin t/a Falah Enterprise v Ku Azman bin Ku Bahari* [2002] MLJU 206; [2002] 7 CLJ 64 in the following language (at p 67):

I am conscious of the approach that I should take in a preliminary objection on matters of form or procedure. Such preliminary objections should not normally be held to prevail over the merits of the case unless there is blatant infringement of the rules and *such infringement has occasioned prejudice* to the adverse party or *to the due administration of justice* ... if the infringement is significant and the culpability is of a high degree, the court cannot overlook such conduct without also condoning it and thereby encouraging non-observance and total disregard of clearly expressed rules in general which are meant to be observed. (Emphasis added.)

Indeed, as one of the measures to help clear the backlog of cases, I would suggest that the Rules Committee re-amend O 1A and O 2 r 3 of the RHC to incorporate express recognition to the consideration of the concept of prejudice to the due administration of justice in civil cases (see *Birkett v James* [1978] AC 297, *Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd & Ors*, *Chishty Coveney & Co v Raja Times* Law Report 29 December 1997, (*Arbuthnot*), *Choraria v Sethia* Times Law Report 29 January 1998).

It is noteworthy that the plaintiff did not appeal against that order but instead chose to file another civil suit based on the same cause of action about two and a half months later (‘the present suit’). I would hold such conduct to be clearly contumelious.

**A** *The appeal*

The defendant maintained that the plaintiff was estopped from filing this present suit against them as this was a deliberate attempt to circumvent the essential appeal process and therefore amounted to a blatant abuse of court process.

**B** I am totally ad idem with the views expressed by Steve Shim CJ (Sabah and Sarawak) in *Lim Oh & Ors v Allen & Gledhill* [2001] 3 MLJ 481 at p 486:

**C** Given the view which we take that there was clearly in existence a peremptory order of the court and that the learned senior assistant registrar had struck out the appellants' first suit for disobedience of that peremptory order, we agree with the Court of Appeal's conclusion that the appellants ought to have appealed against that decision and that the filing of the second suit, containing as it did, the same issues and the reliefs as the first suit, amounted to a deliberate attempt to circumvent the necessary appeal procedure and therefore constituted an abuse of the process of the court.

**D** (see *Janov v Morris* [1981] 3 All ER 780 and *Bailey v Bailey & Anor* [1983] 3 All ER 495.)

This view seems tailor made for the present appeal.

**E** The plaintiff, on the other hand, argued that as the first suit was struck out for want of prosecution, there was no decision on the merits of the matter. Having commenced the present suit within the limitation period, the plaintiff was entitled to proceed with the second action.

**F** I find that the plaintiff's failure to appeal against the striking out of their first suit constituted a concession that the decision of the learned SAR was correct. By not appealing, the plaintiff are now, in fact, precluded from canvassing the argument that they were still within the six-year limitation period. The plaintiff should not be allowed to reagitate an issue (on limitation) which may only be available to them had they appealed against the dismissal of the first suit for want of prosecution. Should this court hold the converse view it would only encourage litigants to ignore the Rules of the High Court and act with impunity so long as the limitation period has yet to run its full course. I am mindful that in practice the courts are averse to dismissing a suit for want of prosecution where the limitation period has not expired. However, where a plaintiff has opted not to appeal but instead file a fresh action, what becomes relevant in the fresh action is whether he has given some cogent reason why the second action should be allowed to proceed.

**H** In *Transcom Rand*, after a discussion of Lord Woolf's dicta in *Arbuthnot*, I made a list of the notable features of his speech and this included:

...

**I** (vi) Indeed, if an action has been dismissed for abuse of process *some special reason has to be identified to justify a second action being allowed to proceed.*

(Emphasis added.)

The plaintiff's disregard to the exigency of time has caused prejudice to the due administration of justice and they have failed to identify any cogent reason to justify being allowed to proceed with the present suit.

Lastly, it must be borne in mind that the plea of limitation has always been recognized as a wholly separate defence available to the defendant to be used as a shield, it was never designed as a sword in the hands of a plaintiff, and for the latter to assert that the second action should be allowed to proceed solely because it was filed within the limitation period is tantamount to invoking a defendant's shield as a plaintiff's sword.

### *Conclusion*

After careful consideration of the pleadings, the affidavits and the submissions put in by both sides, I was satisfied that the defendant's appeal in encl 17 should be allowed with costs, and so it was.

*Appeal allowed and present suit struck out as an abuse of the process.*

Reported by Sivapragasam Kumaran

**A****B****C****D****E****F****G****H****I**